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Executive Director

March 21, 2001

**VIA Fax and US Mail**

**Re: *Qualification for Welfare Exemption under Revenue and Taxation Code Section 214(g)(2)(A)***

Dear Ms. :

This is in response to your request of March 16, 2001, for our opinion concerning whether the Preliminary Reservation Letter (PRL) issued by the California Tax Credit Allocation Committee (CTCAC) to owners of low income housing may serve to meet the requirement of an "enforceable and verifiable agreement with a public agency" in section 214(g)(2)(A) of the Revenue and Taxation Code.<sup>1</sup> The Foundation is the managing general partner of certain limited partnerships which have been unable to meet the documentation requirements of this subsection, lacking both a recorded deed restriction and an enforceable and verifiable agreement with a public agency. As will be discussed further below, the PRLs, which CTCAC issues prior to a regulatory agreement, restrict the uses of these properties to rental to qualified low income households consistent with the provisions of section 214(g)(2)(A); and as such, they may be used to satisfy the "enforceable and verifiable agreement" alternative of this subsection.<sup>2</sup>

**Law and Analysis**

Revenue and Taxation Code section 214(g)(2)(A) provides that

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) Certify and ensure that there is an enforceable and verifiable agreement with a public agency or, a recorded deed restriction, that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by section 50053 of the Health and Safety Code, . . .

<sup>1</sup> Unless otherwise indicated, all statutory references are to the Revenue and Taxation Code.

<sup>2</sup> The PRL also serves to satisfy another requirement that the property owner is a recipient of low income housing tax credits. (section 214(g)(1)(B))

(B) . . .

The eligibility requirements of section 214(g)(2)(A) are more difficult to satisfy, as a result of legislative amendments to the statute, effective January 1, 2000. Section 214(g)(2)(A) previously required that an owner of property merely certify and ensure that there was either “a deed restriction, agreement, or other legal document.” The section 214(g)(2)(A) alternatives are now more restrictive, however, as (1) the “deed restriction” alternative requires that the deed be recorded; (2) the “agreement” alternative is to be met by “an enforceable and verifiable agreement with a public agency”; and (3) the “other legal document” alternative is no longer available for limited partnership owners of low income housing properties.

As a result of the above, a limited partnership property owner must meet one of the two remaining, more restrictive alternatives available under section 214(g)(2)(A). Owners without a recorded deed restriction may also be unable to qualify by providing an enforceable and verifiable regulatory agreement in a timely manner due to the substantial time lag in the issuance of such agreements. Tax Credit properties are subject to a Regulatory Agreement issued by the CTCAC, that is recorded as the deed restriction, but it is not issued and recorded until three to six months after the completion of construction of an apartment development.<sup>3</sup>

The purpose of the PRL issued by the CTCAC is to notify tax credit applicants that their low income housing properties have been granted a preliminary reservation of federal and/or state low income housing tax credits, subject to specified conditions and restrictions imposed on the use of such properties. The standardized language of the PRL typically provides that

The California Tax Allocation Committee . . . hereby reserves for the project . . .  
referenced above . . . low income housing tax credits in the following amount(s)  
. . .

\* \* \*

This Preliminary Reservation is conditioned upon the Project Applicant . . .  
constructing, rehabilitating or acquiring and rehabilitating the Project in  
accordance with the application for low income housing tax credits . . .  
submitted to TCAC (subject to the Applicant maintaining its eligibility under all  
selection criteria and adhering to all conditions stated in the attached staff  
report) and is subject to full compliance by the Applicant with the Code and the  
California Code of Regulations . . .

\* \* \*

. . . Applicant further acknowledges that upon its failure to meet any of the  
requirements in this Preliminary Reservation or the reservation itself or any

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<sup>3</sup> The recording requirement of section 214(g)(2)(A) only applies to the deed restriction alternative, while no such requirement applies to the agreement alternative. As such, if the PRL qualifies as an enforceable and verifiable agreement with a public agency under section 214(g)(2)(A), the recording of such an agreement would not be necessary as no such requirement exists under the statute.

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other requirements of TCAC or, upon mutual consent with TCAC, the Project's reservation may be canceled and the credits returned to TCAC. . . .

As such, the PRL meets the requirements of section 214(g)(2)(A), as enumerated above. The PRL (1) restricts the project's usage, as the PRL is conditioned upon an applicant meeting all of the requirements in the application for low income housing tax credits, and (2) provides for the continuous availability of the units designated for lower income households, as the PRL provides that an applicant must maintain its eligibility and adhere to the conditions stated in the staff report. Thus, limited partnership property owners whose properties have been found ineligible for the exemption because of the absence of an enforceable and verifiable agreement with a public agency, but which have PRLs may provide a copy of their respective PRLs to their respective county assessors and request that their exemption claims be reprocessed.

It should be noted that the actual number of units in the housing project that are continuously available to or occupied by lower income households at the prescribed rent levels would qualify for exemption, rather than the minimum percentage of units restricted to low income housing in the PRL. The actual number of units used for low-income housing is reported in the Supplemental Affidavit, Form 267-L.

Very truly yours,

/s/ Mary Ann Alonzo

Mary Ann Alonzo  
Senior Tax Counsel

MAA:tr

prop/prec/welexqal/01/06maa

cc: Ms. Regina Douglas  
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